



THE COMMONWEALTH OF MASSACHUSETTS  
**WATER RESOURCES COMMISSION**

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**Meeting Minutes for January 11, 2001**

**Commission Members in Attendance:**

Mark P. Smith	Executive Director
Marilyn Contreas	Designee, DHCD
Richard Thibedeau	Designee, DEM
Glenn Haas	Designee DEP
Joe Pelczarski	Designee, CZM (non-voting)
Ron Sharpin	Designee, MDC
Gary Clayton	Public Member
Frank Veale	Public Member
Bob Zimmerman	Public Member

**Others in Attendance**

Ron Washburn	DEM Counsel
Michele Drury	DEM OWR
Peter Weiskel	USGS
Linda Marler	DEM OWR
Mike Gildesgame	DEM OWR
Vicki Gartland	DEM OWR
Nina Danforth	DEM OWR
Dave DeLorenzo	DEP SERO
Lou Wagner	Massachusetts Audubon Society
Duane LeVangie	DEP Boston
Steve Pearlman	DEP Boston
John Reinhardt	DEP Boston
Ming Pan	DEP Boston
Lorraine Downey	MWRA

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**Agenda Item 1: Executive Director's Report**

- Smith was present at the official submittal of the last report from MWRA Boston Harbor Project, declaring that the project was complete after 15 years.
- The Secretary will be announcing the lakes and ponds initiative. This will reenergize the program and build on the watershed approach. The Commission will have a full briefing at the next meeting.
- Tomorrow Smith will speak to Massachusetts Municipal Association about the decentralized water and wastewater planning approach.
- Smith referred to the recent Supreme Court decision on wetlands. DEP will be asked to brief the Commission on what it means for wetland protection in Massachusetts.

Marler gave the hydrologic conditions report:

- December precipitation was near normal on statewide basis, however, levels in the southeast region were lower than normal. With respect to the cumulative total for the Water Year, three regions are still below 80%: the Connecticut River region, Central region and southeast region. There is a 2-3 inch deficit.
- The area of low ground water continues to expand out from the Cape. We now have some areas of low ground water near Taunton.
- The snow pack has developed, however. This is a good sign for recharge in spring.
- We had two major precipitation events in December – one was a rainstorm on December 17<sup>th</sup>, which caused the Hoosic River at Williamstown to hit flood level. All streams statewide have dropped back below median levels.
- The average streamflow levels for January 8<sup>th</sup> are at 56% of median. This is not good. September, October and November were fairly dry. That has led to streamflows being on the low side (not much base flow).
- The Weather Service continues to predict a normal winter.
- Reservoirs are at satisfactory levels; most are at 90% full.

**Agenda Item 2: Policy and proposed regulation change regarding third party standing under the Interbasin Transfer Act**

This issue came up in December 1999. We discussed the current practice for responding to questions concerning the applicability of the Interbasin Transfer Act to specific projects. The issue of applicability usually is handled at the staff level by review of the regulations, policies, and practices and with legal staff where necessary. If it is very clear that the Act does or does not apply, staff will give an answer. Where there is doubt, staff will advise the project proponent to request a determination of applicability under the Act in order to get an official opinion from the WRC. The WRC affirmed this policy 1999, but directed staff to convene a task force to formalize the policies and practices.

The task force met in March 2000 and came up with proposed changes, which were presented to the Commission in April. Upon review, DEP raised some legal issues. Washburn and DEP legal counsel discussed these in detail. DEP was concerned that the regulations proposed by the task force would create another class of appeal under 30A. This was not the intention or direction of WRC or the task force. The intention was to broaden the regulations and policy so that staff could collect information from as many people as possible, but not create another category of appeal by any one person who is not a direct party to the action.

Smith stated that Kerry Mackin of the Ipswich River Watershed Association was concerned about this version and wants the issue to go back to task force. Staff had sent the current version to task force members, but received no responses on the proposed policy and regulation change.

Drury explained the new version of the regulations. In addition to stating that the Commission will consider information from third parties, the proposed regulations separate out the Request for Determination of Applicability and the Request for Determination of Insignificance processes, which are very different.

The policy formalizes the practice of the WRC putting responses in writing, if requested. The policy and proposed regulations clarify that only a proponent can request a determination of applicability, but any member of the public can ask the WRC to investigate a proposal and, if necessary, require the proponent to come for a determination. All the rights under chapter 30A will remain unchanged.

Clayton asked what recourse is available for someone who did not agree with a WRC decision that the ITA does not apply or a project is insignificant. Would it be for ten or more citizens to appeal a decision? What happens if WRC does not take action? Smith stated that a “ten citizens” suit can be used to force an agency to do its job. Drury added that all actions of the WRC under the Interbasin Transfer Act can be appealed through Superior Court. The Act does not have an adjudicatory process. Formalization of the policy would probably address issue of the Commission potentially not “doing its job”, since it requires a response to inquiries.

The policy and proposed regulation changes will be brought back to the task force once again and then returned to the WRC for a vote.

**Agenda Item 3: Vote on the WRC work plan for 2001**

The work plan has not changed much since it was discussed at the last meeting. The completion of the drought plan, discussed last month, has been added to the work plan. These are all major tasks that will require major efforts on the part of staff. In addition, we need to keep track of the USGS work on the Ipswich habitat study and other USGS programs. Clayton suggested that we “check in” on a quarterly basis to figure out where we are with the work plan.

<b>V O T E</b>	Clayton moved and Veale seconded a motion to approve the 2001 work plan with the addition of the USGS programs.
	The work plan was approved by unanimous vote.

**Agenda Item 4: Vote on the policy for developing water needs forecasts for public water suppliers**

Gildesgame stated that there were fairly small “word crafting” changes to the version of the policy presented last month, but they were just made “hours” before the WRC meeting. The latest version, Draft 10, dated January 11<sup>th</sup>, was distributed. Smith said that the policy was up for a vote if the WRC felt comfortable with the changes.

Levangie stated that the policy was intended to formalize what we do now. Groups A and B communities can have water needs forecasts developed as we do now, according to the WRC-approved methodology. Group C is the target of this policy. These are communities that have not had a Water Management Act permit and have had no requirements to do any water conservation, or communities which do have a permit but have not lived up to the conservation conditions of the permit. Group C sets up the concept of interim allocations, while these communities develop good data and/or get into compliance with their permits. This policy will put Group C communities on a schedule to implement conservation measures and obtain a

permit. The policy will give them a five year permit until good data is developed. Good data may show that the communities don't need additional volumes in their permits.

Gildesgame recapped last month's discussion. DEM has found that when communities request water needs forecasts for use in a WMA permit, the data is not always accurate (due to metering problems, high gpcd, high unaccounted-for water, etc.). Interim allocations are not forecasts, but would allow the community to "get by" for the next few years and develop the type of data needed to use in our forecasting methodology. The allocation will be part of the permit, which will require conservation measures.

Levangie stated that this does not give Group C communities a break. They will be required to implement the same types of conservation measures as Groups A and B, but in an expedited manner.

Gildesgame said that Group A towns already have a WMA permit. Therefore it is expected that they will be in compliance with their permit, including the conservation standards. They would have to meet the guidelines in place for Method 1 communities. Group B would need to meet the standards for either a Method 1 or 2 community (under the WRC- approved methodology).

Zimmerman expressed concern that some communities show need, when they do not have the supplies to meet the need. Smith answered that this is true and is a concern, but the WMA does not give increased volume allocations if the supply is not there. All the water needs forecasts do is to identify the need. The WMA then works to assure that the supply can meet the need. If it can't, the community may be directed to increase their conservation efforts or look elsewhere for supply.

Zimmerman stated that we haven't gone far enough in making the determination as to whether the supply is there. Smith suggested that DEP should report to the WRC on the availability of the supply to meet the needs approved by the WRC. Our basin plans originally looked at this too. There has not been money to look at water availability on a state-wide basis, as there used to be when we were developing reservoirs and doing basin planning. Some of it gets done through the USGS and watershed teams, but this work looks at smaller areas. The look at the "big picture" is missing now.

Zimmerman suggested that if DEM doesn't have the funds to do basin planning, we should require water suppliers do this.

Clayton asked if it was necessary to make it explicit that there will be no other interim allocations after five years. Levangie answered that the language states "shall not exceed five years". If the community had not developed good data during this period, they would be subject to an enforcement action. There was discussion on whether or not interim allocations could be, or should be, renewed.

Smith stated that the draft policy should include a statement that WRC does not endorse bad water management and a community should not assume that it has a right to the amount in interim allocation. Levangie responded that the policy states that once valid water needs

forecasts are developed the permit volume could decrease. Smith still suggested stronger language.

Haas again stated that this should not be a WRC policy. If the WRC approves the policy, it endorses the interim allocations. Clayton endorsed adopting it as a Commission policy.

Smith asked “What is the advantage to not having the WRC adopt the policy?” Haas replied that Smith had expressed concerns about not wanting to endorse the interim allocation. “If you adopt the policy you are endorsing the number, even if you haven’t seen it.” Smith would rather have the WRC take responsibility, so that there is no confusion at the town level.

Smith suggested that we review a “clean” document and consider Haas’ concerns. Haas stated that this policy is only direction for DEP’s permitting, not for its enforcement. Therefore the language should be rigid and state that the interim allocation is nonrenewable after the five year period.

Smith stated that this policy would be brought back next month for approval.

**Agenda Item 5a: Presentation on the draft regulatory revisions regarding sanitary sewer connections and extensions.**

Pearlman stated that some of his time would be ceded to John Reinhardt to discuss the holding tank regulations, as these are closer to completion.

This issue was before the WRC once before. The draft revisions have not changed drastically. The regulatory approach is still the same. The purpose is to protect the treatment works and the water body to which the treatment works discharge. The real issue with sanitary flow is the capacity of plant. DEP is trying to create short-and long-term strategies to deal with sanitary wastewater.

Part A of long term solution is to substitute Comprehensive Wastewater Management Plans, which will include all intended extensions and allowable connections and also address I/I and other issues that affect total flow, for permitting. The new guidelines for these plans aren’t completed but a first draft should be out soon. Any proposed extension or connection that conforms to an approved plan would be exempt from permitting. For existing wastewater management plans, DEP would need to state in writing that the plan conforms with new guidelines in order for connections and extension governed by it to be exempt from permitting.

If there is no plan, or if the plan does not conform to the new guidelines, Part B kicks in. DEP is cutting back number of permits by 50% by implementing Part B

Sewer extensions and connections are exempt if :

1. They are below the MEPA thresholds. (27% of the projects reviewed do go through MEPA.)
2. They are less than 20,000 gpd
3. The extension to new sewer main is not more than mile in length, or 1000 feet if outside existing roadway or right of way

Part B gives an impetus to plan

DEP is keeping jurisdiction over privately owned pump stations (except for small grinder pumps). A major change from last time this was presented to the WRC is that under Part A, the CWMP will go to MEPA and may need EIR. This will result in review of individual projects at that time. These proposed revisions are part of a larger regulations change and won't be finalized until the industrial holding tank regulations are finalized.

Smith asked how we get the Part B permits to look at the issues addressed under a CWMP. Can the regulations look at other issues beyond engineering issues, such as stressed basins? Pearlman replied that the NPDES permits are trying to strengthen the requirements for planning. This may be a better area to address these issues. DEP is also trying to create other incentives to push people towards planning. Haas stated that DEP can take jurisdiction over any project that involves rare species, ACECs, historic resources, sensitive habitats etc.

Thibedeau asked about the geographic area for a plan. Is it a municipality? Haas replied that it could also be a regional plan. Thibedeau asked who would take lead on regional plans? Haas responded that it could be a sewer district, a treatment plant, a consortium of towns etc.

Gartland asked if CWMPs will expire. Haas replied that a planning cycle usually lasts 20 years, but the plans don't have expiration date.

**Agenda Item 5b: Presentation on the draft regulatory revisions regarding industrial wastewater holding tanks.**

Since Reinhardt presented this to the WRC last September, some changes have occurred. The intent of the revised regulations is to protect drinking water. There is also an issue with shipping from one sewer district to another which could occur if the industrial wastewater had substances prohibited in the district where it was generated.

The revised regulations call for plan approvals and self-certification. They set out clear design and operating standards for facilities. The revised regulations cover tanks and containers, both mobile and non-mobile. They distinguish between those in drinking water protection zones. They require double walls for in-ground tanks. If the business has a plan approval, it doesn't have to go through the certification process.

In September, the WRC raised the issue of approvals in drinking water protection zones. There aren't many of these, most of them are associated with drinking water treatment facilities. That's why regulation is needed. However, this issue is treated through the drinking water program, so this section has been taken out of revised regulations. Therefore these regulations will need to go back out to public hearing.

Other changes: a provision requiring facilities which ship to other treatment facilities to connect to sewers, where available, has been added. Small operations which can't meet treatment standards of the local treatment facility can still use containers, rather than holding tanks, so it is not that onerous.

Pelczarski asked about marine holding tanks. Do barges and ships fall under the definition of mobile holding tanks? Reinhardt replied that it was not intent to regulate these. Gildesgame suggested that DEP may want to look at marine holding tanks.

Public hearings are planned for April. DEP will return to WRC with further revisions based on the hearings.

Meeting adjourned

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Minutes approved 11/14/02